

EXHIBIT 32

From: "Larry E. Coploff" <lec@crwlaw.net>
To: "'Maria Boileau'" <MBoileau@ClintonCountyPA.com>
CC: "'Jann Meyers'" <JMeyers@ClintonCountyPA.com>
Date: 6/3/2020 8:00 AM
Subject: treatment of absentee/mail-in ballots that fail verification
Attachments: 31468 Canvassing of official absentee ballots and mail-in ballots.pdf; 31466 Voting by absentee electors.pdf

Maria,
You've asked for my opinion as to how to handle mail-in ballots for which the "signature" on the return outside envelope does not match your records (voter registration, mail-in ballot application, poll book). Per 25 P.S. § 3146.8(g)(3), this comparison process is known as "verification." Once successfully verified, the process for opening and tallying mail-in ballots per 25 P.S. § 3146.8(g)(4) is followed. 25 P.S. § 3146.8(h) addresses the disposition of ballots that fail verification. That section allows for proof of identification to be received and verified prior to the 6th day following the election. If verified in the in that timeframe, the ballot can be counted. If not verified, the ballot is not counted.

So it appears that the voter should be given the opportunity to "verify" the ballot. 25 P.S. § 3146.6(a) requires the elector to sign the declaration printed on the return the envelope. If the voter does not confirm that he or she signed the declaration, verification would fail and the ballot would not be counted.

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Proposed Legislation

Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 25 P.S. Elections & Electoral Districts (Refs & Annos)
Chapter 14. Election Code (Refs & Annos)
Article XIII. Voting by Qualified Absentee Electors (Refs & Annos)

25 P.S. § 3146.6

§ 3146.6. Voting by absentee electors

Effective: March 27, 2020

Currentness

<Section 14 of Act 2019, Oct. 31, P.L. 552, No. 77, imd. effective, provides
that this Act shall apply to elections held on or after April 28, 2020.>

<Section 17 of Act 2020, March 27, P.L. ___, No. 12, imd. effective, provides that
the amendment of 25 P.S. § 3146.6(a) by that Act shall apply to envelopes and ballots
purchased, printed or acquired after March 27, 2020 and that the amendment of 25 P.S. §
3146.6(b) by that Act shall apply to elections occurring on or after November 2, 2020.>

(a) Except as provided in paragraphs (2) and (3), at any time after receiving an official absentee ballot, but on or before eight o'clock P.M. the day of the primary or election, the elector shall, in secret, proceed to mark the ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen, and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "Official Election Ballot." This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. The elector shall then fill out, date and sign the declaration printed on such envelope. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

(1) Deleted by 2019, Oct. 31, P.L. 552, No. 77, § 6, imd. effective.

(2) Any elector, spouse of the elector or dependent of the elector, qualified in accordance with the provisions of section 1301, subsections (e), (f), (g) and (h) ¹ to vote by absentee ballot as herein provided, shall be required to include on the form of declaration a supporting declaration in form prescribed by the Secretary of the Commonwealth, to be signed by the head of the department or chief of division or bureau in which the elector is employed, setting forth the identity of the elector, spouse of the elector or dependent of the elector.

(3) Any elector who has filed his application in accordance with section 1302 subsection (e) (2), ² and is unable to sign his declaration because of illness or physical disability, shall be excused from signing upon making a declaration which shall be witnessed by one adult person in substantially the following form: I hereby declare that I am unable to sign my declaration for voting my absentee ballot without assistance because I am unable to write by reason of my illness or physical disability. I have made or received assistance in making my mark in lieu of my signature.

(Date)

(Mark)

(Complete Address of Witness)

(Signature of Witness)

(b)(1) Any elector who receives and votes an absentee ballot pursuant to section 1301 shall not be eligible to vote at a polling place on election day. The district register at each polling place shall clearly identify electors who have received and voted absentee ballots as ineligible to vote at the polling place, and district election officers shall not permit electors who voted an absentee ballot to vote at the polling place.

(2) An elector who requests an absentee ballot and who is not shown on the district register as having voted the ballot may vote by provisional ballot under section 1210(a.4)(1).³

(3) Notwithstanding paragraph (2), an elector who requests an absentee ballot and who is not shown on the district register as having voted the ballot may vote at the polling place if the elector remits the ballot and the envelope containing the declaration of the elector to the judge of elections to be spoiled and the elector signs a statement subject to the penalties under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) in substantially the following form:

I hereby declare that I am a qualified registered elector who has obtained an absentee ballot or mail-in ballot. I further declare that I have not cast my absentee ballot or mail-in ballot, and that instead I remitted my absentee ballot or mail-in ballot and the envelope containing the declaration of the elector to the judge of elections at my polling place to be spoiled and therefore request that my absentee ballot or mail-in ballot be voided.

(Date)

(Signature of Elector) (Address of Elector)

(Local Judge of Elections)

(c) Except as provided under 25 Pa.C.S. § 3511 (relating to receipt of voted ballot), a completed absentee ballot must be received in the office of the county board of elections no later than eight o'clock P.M. on the day of the primary or election.

Credits

1937, June 3, P.L. 1333, art. XIII, § 1306, added 1951, March 6, P.L. 3, § 11. Amended 1963, Aug. 13, P.L. 707, § 22, effective Jan. 1, 1964; 1968, Dec. 11, P.L. 1183, No. 375, § 8; 1998, Feb. 13, P.L. 72, No. 18, § 16, imd. effective; 2006, Nov. 9, P.L. 1330, No. 137, § 2, imd. effective; 2019, Oct. 31, P.L. 552, No. 77, § 6, imd. effective; 2020, March 27, P.L. ___, No. 12, § 11, imd. effective.

Notes of Decisions (27)

Footnotes

1 25 P.S. § 3146.1.

2 25 P.S. § 1346.2.

3 25 P.S. § 3050.

25 P.S. § 3146.6, PA ST 25 P.S. § 3146.6

Current through 2020 Regular Session Act 22. Some statute sections may be more current, see credits for details.

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Proposed Legislation

Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 25 P.S. Elections & Electoral Districts (Refs & Annos)
Chapter 14. Election Code (Refs & Annos)
Article XIII. Voting by Qualified Absentee Electors (Refs & Annos)

25 P.S. § 3146.8

§ 3146.8. Canvassing of official absentee ballots and mail-in ballots

Effective: March 27, 2020

Currentness

<Section 14 of Act 2019, Oct. 31, P.L. 552, No. 77, imd. effective, provides
that this Act shall apply to elections held on or after April 28, 2020.>

<Section 17 of Act 2020, March 27, P.L. ____, No. 12, imd. effective, provides that the amendment
of 25 P.S. § 3146.8 by that Act shall apply to elections occurring on or after June 2, 2020.>

(a) The county boards of election, upon receipt of official absentee ballots in sealed official absentee ballot envelopes as provided under this article and mail-in ballots as in sealed official mail-in ballot envelopes as provided under Article XIII-D, ¹ shall safely keep the ballots in sealed or locked containers until they are to be canvassed by the county board of elections. An absentee ballot, whether issued to a civilian, military or other voter during the regular or emergency application period, shall be canvassed in accordance with subsection (g). A mail-in ballot shall be canvassed in accordance with subsection (g).

(b) Watchers shall be permitted to be present when the envelopes containing official absentee ballots and mail-in ballots are opened and when such ballots are counted and recorded.

(b.1) Deleted by 2019, Oct. 31, P.L. 552, No. 77, § 7, imd. effective.

(c) Deleted by 1968, Dec. 11, P.L. 1183, No. 375, § 8.

(d) Whenever it shall appear by due proof that any absentee elector or mail-in elector who has returned his ballot in accordance with the provisions of this act has died prior to the opening of the polls on the day of the primary or election, the ballot of such deceased elector shall be rejected by the canvassers but the counting of the ballot of an absentee elector or a mail-in elector thus deceased shall not of itself invalidate any nomination or election.

(e) Deleted by 2019, Oct. 31, P.L. 552, No. 77, § 7, imd. effective.

(f) Any person challenging an application for an absentee ballot, an absentee ballot, an application for a mail-in ballot or a mail-in ballot for any of the reasons provided in this act shall deposit the sum of ten dollars (\$10.00) in cash with the county board,

which sum shall only be refunded if the challenge is sustained or if the challenge is withdrawn within five (5) days after the primary or election. If the challenge is dismissed by any lawful order then the deposit shall be forfeited. The county board shall deposit all deposit money in the general fund of the county.

Notice of the requirements of subsection (b) of section 1306² shall be printed on the envelope for the absentee ballot or mail-in ballot.

(g)(1)(i) An absentee ballot cast by any absentee elector as defined in section 1301(a), (b), (c), (d), (e), (f), (g) and (h)³ shall be canvassed in accordance with this subsection if the ballot is cast, submitted and received in accordance with the provisions of 25 Pa.C.S. Ch. 35 (relating to uniform military and overseas voters).

(ii) An absentee ballot cast by any absentee elector as defined in section 1301(i), (j), (k), (l), (m) and (n), an absentee ballot under section 1302(a.3)⁴ or a mail-in ballot cast by a mail-in elector shall be canvassed in accordance with this subsection if the absentee ballot or mail-in ballot is received in the office of the county board of elections no later than eight o'clock P.M. on the day of the primary or election.

(1.1) The county board of elections shall meet no earlier than seven o'clock A.M. on election day to pre-canvass all ballots received prior to the meeting. A county board of elections shall provide at least forty-eight hours' notice of a pre-canvass meeting by publicly posting a notice of a pre-canvass meeting on its publicly accessible Internet website. One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the absentee ballots and mail-in ballots are pre-canvassed. No person observing, attending or participating in a pre-canvass meeting may disclose the results of any portion of any pre-canvass meeting prior to the close of the polls.

(2) The county board of elections shall meet no earlier than the close of polls on the day of the election and no later than the third day following the election to begin canvassing absentee ballots and mail-in ballots not included in the pre-canvass meeting. The meeting under this paragraph shall continue until all absentee ballots and mail-in ballots received prior to the close of the polls have been canvassed. The county board of elections shall not record or publish any votes reflected on the ballots prior to the close of the polls. The canvass process shall continue through the eighth day following the election for valid military-overseas ballots timely received under 25 Pa.C.S. § 3511 (relating to receipt of voted ballot). A county board of elections shall provide at least forty-eight hours' notice of a canvass meeting by publicly posting a notice on its publicly accessible Internet website. One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the absentee ballots and mail-in ballots are canvassed.

(3) When the county board meets to pre-canvass or canvass absentee ballots and mail-in ballots under paragraphs (1), (1.1) and (2), the board shall examine the declaration on the envelope of each ballot not set aside under subsection (d) and shall compare the information thereon with that contained in the "Registered Absentee and Mail-in Voters File," the absentee voters' list and/or the "Military Veterans and Emergency Civilians Absentee Voters File," whichever is applicable. If the county board has verified the proof of identification as required under this act and is satisfied that the declaration is sufficient and the information contained in the "Registered Absentee and Mail-in Voters File," the absentee voters' list and/or the "Military Veterans and Emergency Civilians Absentee Voters File" verifies his right to vote, the county board shall provide a list of the names of electors whose absentee ballots or mail-in ballots are to be pre-canvassed or canvassed.

(4) All absentee ballots which have not been challenged under section 1302.2(c) ⁵ and all mail-in ballots which have not been challenged under section 1302.2-D(a)(2) ⁶ and that have been verified under paragraph (3) shall be counted and included with the returns of the applicable election district as follows:

(i) The county board shall open the envelope of every unchallenged absentee elector and mail-in elector in such manner as not to destroy the declaration executed thereon.

(ii) If any of the envelopes on which are printed, stamped or endorsed the words "Official Election Ballot" contain any text, mark or symbol which reveals the identity of the elector, the elector's political affiliation or the elector's candidate preference, the envelopes and the ballots contained therein shall be set aside and declared void.

(iii) The county board shall then break the seals of such envelopes, remove the ballots and count, compute and tally the votes.

(iv) Following the close of the polls, the county board shall record and publish the votes reflected on the ballots.

(5) Ballots received whose applications have been challenged and ballots which have been challenged shall be placed unopened in a secure, safe and sealed container in the custody of the county board until it shall fix a time and place for a formal hearing of all such challenges, and notice shall be given where possible to all absentee electors and mail-in electors thus challenged and to every individual who made a challenge. The time for the hearing shall not be later than seven (7) days after the deadline for all challenges to be filed. On the day fixed for said hearing, the county board shall proceed without delay to hear said challenges, and, in hearing the testimony, the county board shall not be bound by the Pennsylvania Rules of Evidence. The testimony presented shall be stenographically recorded and made part of the record of the hearing.

(6) The decision of the county board in upholding or dismissing any challenge may be reviewed by the court of common pleas of the county upon a petition filed by any person aggrieved by the decision of the county board. The appeal shall be taken, within two (2) days after the decision was made, whether the decision was reduced to writing or not, to the court of common pleas setting forth the objections to the county board's decision and praying for an order reversing the decision.

(7) Pending the final determination of all appeals, the county board shall suspend any action in canvassing and computing all challenged ballots received under this subsection irrespective of whether or not appeal was taken from the county board's decision. Upon completion of the computation of the returns of the county, the votes cast upon the challenged official absentee ballots that have been finally determined to be valid shall be added to the other votes cast within the county.

(h) For those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified:

(1) Deleted by 2019, Oct. 31, P.L. 552, No. 77, § 7, imd. effective.

(2) If the proof of identification is received and verified prior to the sixth calendar day following the election, then the county board of elections shall canvass the absentee ballots and mail-in ballots under this subsection in accordance with subsection (g)(2).

(3) If an elector fails to provide proof of identification that can be verified by the county board of elections by the sixth calendar day following the election, then the absentee ballot or mail-in ballot shall not be counted.

(i) Notwithstanding the provisions of this section, a qualified absentee elector shall not be required to provide proof of identification if the elector is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (Public Law 99-410, 100 Stat. 924)⁷ or by an alternative ballot under the Voting Accessibility for the Elderly and Handicapped Act (Public Law 98-435, 98 Stat. 1678).⁸

Credits

1937, June 3, P.L. 1333, art. XIII, § 1308, added 1951, March 6, P.L. 3, § 11. Amended 1963, Aug. 13, P.L. 707, § 24, effective Jan. 1, 1964; 1968, Dec. 11, P.L. 1183, No. 375, § 8; 1980, July 11, P.L. 600, No. 128, § 6, imd. effective; 1998, Feb. 13, P.L. 72, No. 18, § 16, imd. effective; 2002, Dec. 9, P.L. 1246, No. 150, § 16, effective in 60 days; 2006, May 11, P.L. 178, No. 45, § 12, effective July 1, 2006; 2006, Nov. 9, P.L. 1330, No. 137, § 3, imd. effective; 2012, March 14, P.L. 195, No. 18, § 7, imd. effective; 2019, Oct. 31, P.L. 552, No. 77, § 7, imd. effective; 2020, March 27, P.L. ____, No. 12, § 11, imd. effective.

Notes of Decisions (38)

Footnotes

1 25 P.S. § 3150.11 et seq.

2 25 P.S. § 3146.6.

3 25 P.S. § 3146.1.

4 25 P.S. § 3146.2.

5 25 P.S. § 3146.2b.

6 25 P.S. § 3150.12b.

7 52 U.S.C.A. § 20301 et seq.

8 52 U.S.C.A. § 20101 et seq.

25 P.S. § 3146.8, PA ST 25 P.S. § 3146.8

Current through 2020 Regular Session Act 22. Some statute sections may be more current, see credits for details.